IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1250 OF 1993

M/s.Chemox Exports Imports Pvt.Ltd.,)
a Private Limited Company, Limited)
by shares and registered as such)
under the Companies Act, 1956,)
having its registered office at)
Chemox House, 6th Floor,)
7, Barrack Road, Marine Lines,)
Bombay - 400 020.).. Petitioner

Vs.

1. Union of India.)

2. The Defence Estate Officer,)
Bombay Circle, Colaba, Bombay.)

3. The Commander,)
Command Quartering Office)
for Flag Officer Commanding-in-)
Chief, having his office at)
Headquarters, Western Naval)
Command, Shahid Bhagat Singh)
Road, Bombay - 400 001.).. Respondents

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Shri D.H.Mehta i/b M/s.Thakordas & Madgavkar for the petitioner.

S/Shri Y.S.Bhate with Y.R.Mishra for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 29th AUGUST, 2005.

ORAL JUDGMENT: (Per R.M.S.Khandeparkar, J)

1. Heard. The petitioner seeks writ of mandamus directing the respondents to dehire the Flat No.4,

situated on the first floor of the Chemox House, situate at 7, Barrack Road, Bombay - 400 020, by giving due effect to the dehiring policy adopted by the respondents in relation to the private premises which was hired by the Defence Department of the Government of India.

2. The few facts relevant for the decision are that the suit flat belonged to one Mohamed Ally Kaderjee Motiwala from whom the petitioner had purchased the same under the conveyance dated 7th November, 1983. Prior thereto, the suit flat was occupied by the respondent No.2 on payment of compensation at the rate of Rs.104.22 per month. The suit flat comprises of two rooms and kitchen having total area of 725 sq.ft.

3. It is the contention of the petitioner that the suit flat is not being regularly occupied by the respondents and for a long time, it was kept without being used. All the efforts on the part of the petitioner to get the premises released from the possession and occupation of the respondents have failed and even though the respondents had assured that in terms of the dehiring policy, they would dehire the premises, the respondents have failed to

deliver the vacant possession of the suit flat to the petitioner. It is the further contention of the petitioner that the respondents are illegally retaining the possession of the suit flat contrary to the de-hiring policy in relation to the private premises. It is the contention of the petitioner that once the premises are requisitioned, they cannot be retained by the respondents for a longer period. The law in that regard is well settled by the decision of the Apex Court and yet the respondents are illegally retaining the possession of the suit premises.

4. On the other hand, it is the contention of the respondents that the premises are being occupied by the Defence personnel for residential purposes and the same would be de-hired in accordance with the de-hiring policy as and when the premises are available for the purpose of de-hiring.

5. The learned Advocate appearing for the petitioner has sought to justify the relief in the nature of mandamus for direction to the respondents to deliver possession of the suit flat to the petitioner on two grounds. Firstly that the respondents cannot retain possession of the suit flat contrary to the dehiring policy in relation to the private premises.

Secondly that the premises being requisitioned, they cannot be retained for too long period.

6. The learned Advocate appearing for the respondents, on the other hand, submitted that since the respondents are occupying the premises on rent, the question of the petitioner seeking direction for delivery of possession of the suit flat in writ jurisdiction does not arise, as the provisions of the Rent Act in force in the State are applicable, and in any case, since the petitioner desires to evict the respondents from the suit flat, the only remedy which is available is in terms of the provisions of the Rent Act.

7. As regards the contention about the requisition of the property, apart from the bare allegation in that regard, the petitioner has not been able to substantiate the same. In fact, the entire petition proceeds on the ground of failure on the part of the respondents to implement the dehiring policy in relation to the private flats. As an alternative submission to justify the eviction of the respondents from the suit flat, the contention is sought to be raised in the paragraphs 9 and 10 of the petition that the respondents cannot retain the premises, acquired

by way of requisitioning, for too long period. Undoubtedly, the law in that regard is well settled. However, before seeking any direction on the basis of the Supreme Court decision in that regard, it is necessary for the petitioner to establish that the property in question was in fact requisitioned in accordance with the provisions of law relating to the requisition of the property. The entire tenor of the petition coupled with the affidavit-in-reply, which was filed by the respondents in answer to the Notice of Motion No.413 of 1993 which was moved by the petitioner in the present petition, it is apparent that the respondents had taken the premises on rent. In fact, a copy of the letter dated 25th May, 1943 addressed to the erstwhile owner of the premises clearly discloses that the premises were sought to be taken over by the respondents' predecessor as the tenant in relation to such premises. Consequently, the provisions of the Rent Act would apply to the premises.

8. As regards the second contention that the respondents are retaining the possession of the suit flat contrary to the dehiring policy in relation to the private premises, merely because there is a dehiring policy, that itself cannot enure to the

benefit of the petitioner to contend that the petitioner would be entitled to seek eviction of the respondents from the suit flat to which the provisions of the Rent Act are clearly applicable. Once the occupant of the structure gets protection under the rent legislation, the owner of such premises cannot seek eviction of an occupant of such structure by-passing the provisions of the rent legislation and seeking interference of this Court in writ jurisdiction. It was also sought to be argued that once the premises are acquired and requisitioned in terms of the provisions of law, the question of applicability of the provisions of the Rent Act does not arise. Infact, it is not necessary to deal with the said proposition, as in the case in hand, the petitioner has nowhere established that the premises were either in fact requisitioned or acquired in terms of any of the provision of law.

9. In the circumstances, therefore, once it is clear that the provisions of the Rent Act are clearly applicable to the premises in question, the question of interference of this Court in writ jurisdiction to direct the respondents to vacate the premises in question does not arise. Hence, the petition fails and is hereby dismissed. Rule discharged. No order

as to costs.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)